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Condo/HOA Sidewalk Duties: The Perils of Board Inspections

Recently an HOA president asked: "Does your community have a written policy covering sidewalk safety and inspections? I'm looking for any recognized industry standards, for example an uplift of a half-inch requires grinding or replacement. We've been replacing and grinding HOA owned sidewalks for years, but we don't have a written policy or inspection schedule. How about enforcing homeowners' sidewalks?"

Our experts would like to back up and answer a different question first: Is this something boards should really be doing? Here, they explain why this might be best left to experts.

Are Sidewalks Yours to Touch?

"If the sidewalks fall within the association's responsibility, trip hazards are huge," notes [Zuly Maribona](#), LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations.

Note that Maribona said *if*. So let's start with a message we often share: First, know whether your [state law](#) or [governing documents](#) require you to maintain sidewalks or even *permit* you to do anything to them.

"Colorado is really bizarre," explains [Elina Gilbert](#), a shareholder at Altitude Community Law in Lakewood, Colo., who has specialized in community association law for 23 years. "We had a law enacted in 2022 that basically says associations aren't allowed to manage anything when it comes to public rights of way. To the extent sidewalks are part of that, there's nothing associations can do.

"If the developer entered into an agreement with a government entity where the developer said they'd maintain sidewalks, the community has to maintain them," she adds. "But unless that's the case, they can't regulate the use of sidewalks in any shape or form.

"Typically, at least here, sidewalks are maintained by the city and county, but the homeowner has to clear the snow," says Gilbert. "If sidewalks are part of a [community's common area](#), then it's not any different from the parking lots. The condo or HOA has to maintain them and clear the snow."

When Sidewalks Are Your Duty

If you've checked your state law and documents and found that it *is* your community's duty to maintain sidewalks, first be sure you have a system for owners to report any

hazards they notice. "You may have residents report this kind of thing," says Maribona. "And you should [have a way for residents to report](#) that type of information."

As to inspections, you should probably plan this task as you'd plan any other maintenance or insurance risk assessment.

"This gets to having an [overall maintenance plan](#)," says [Alex Noland](#), CCAL, founder of Noland Law PC in San Francisco, which represents 200-plus community associations throughout California. "When you're looking at things like your parking lot, sidewalks, and driveways, it's not a bad idea to have an inspection on some periodic basis," he states.

"In Florida, this typically falls within an insurance risk inspection," explains Maribona. "There's usually some kind of a checklist from an insurance perspective asking whether the association is aware of these hazards and whether they're taking action to prevent them."

However, Noland and others say knowing what seems safe and not when it comes to pavement probably isn't in your wheelhouse. So you need to turn to those who do know their sidewalk stuff. "It's probably best for the HOA to be talking to the pavement person, who's the expert, to get guidance on how often to do inspections and what you should be looking at," he says. "For instance, that expert might say, 'If you see a difference of more than a half inch, you should do something.'"

[Janet Oulousian Aronson](#), a partner at Marcus Errico Emmer & Brooks in Braintree, Mass., who is licensed in that state, in addition to Rhode Island and New Hampshire, agrees. "To me, board members aren't experienced or qualified to make that determination," she says. "Maybe they can see something that's obvious. But if they're really looking for something like a half-inch lift, I think they need to bring out a code expert or an engineer to be the one to say whether something is a hazard."

That's Gilbert's advice, too. "I usually tell boards they're not the experts in concrete and safety measures," she states. "If you're not sure where there's a [safety hazard](#), you need to have an expert come out and tell you. And if you [rely on experts](#) like that, you're [protected from liability](#). You shouldn't be making that call on a safety issue."

Even a manager like Maribona might turn to the experts for sidewalk inspections. "It's the [management team](#) that would execute an insurance risk evaluation," she says. "But we might hire a third party to handle that aspect of the checklist."

Speaking of [insurers](#), should you ask your insurer for guidance on sidewalk inspections? Noland would advise against it. "If you ask your insurer about this, are you almost putting them on notice that you're not currently doing this?" he wonders. "I don't know that I'd go around asking them what type of inspection they want because it might lead to weird things happening on the insurer's part."

Whomever you turn to, be sure you listen to that expert. "Once you have the expert come out, you have to be prepared to carry out the recommendation of that person," notes Aronson. "If something is identified, you need to deal with it. Otherwise you'll definitely have liability."

"But I don't think boards are able to make an evaluation," she says. "They're not qualified. Bring in a qualified person, and maybe do that every few years."